

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN ROYAL JOHNSON**, on January 16, 2003 at 3:00 P.M., in Room 317-B & C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Royal Johnson, Chairman (R)  
Sen. Corey Stapleton, Vice Chairman (R)  
Sen. Walter McNutt (R)  
Sen. Gary L. Perry (R)  
Sen. Don Ryan (D)  
Sen. Emily Stonington (D)  
Sen. Bob Story Jr. (R)  
Sen. Mike Taylor (R)

**Members Excused:** Sen. Bea McCarthy (D)  
Sen. Ken Toole (D)

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Services Division  
Marion Mood, Committee Secretary

**Please Note:**

**Audio-only Committees:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 146, 1/10/2003;  
SB 91, 1/10/2003; SB 67, 1/10/2003

Executive Action: None

HEARING ON SB 146

Sponsor: SEN. SHERMAN ANDERSON, SD 28, DEER LODGE

Proponents: Tom Livers, Dept. of Environmental Quality  
John Northey, Legal Counsel, Leg. Audit Division

Opponents: none

Opening Statement by Sponsor:

SEN. SHERMAN ANDERSON, SD 28, DEER LODGE, opened by saying SB 146 was requested by the DEQ to repeal four unused state grant and loan programs from statute as described in the title of the bill. Some of these programs had run out, others had been replaced with approved and more current versions, and the funding source for all of them had long dried up. He advised the members that Tom Livers from the DEQ was available to provide additional information.

Proponents' Testimony:

Tom Livers, DEQ, handed in written testimony, **EXHIBIT**(ens09a01).

John Northey, Legal Counsel, Leg. Audit Division, told the committee that his office had determined the language in the codes was obsolete, and thus they recommended that it be repealed.

Questions from Committee Members and Responses:

SEN. BOB STORY, SD 12, PARK CITY, questioned how the exemptions in Section 1 fit into the bill. Mr. Livers pointed to lines 10 and 11 on page 2 where language referring to the definition in 90-4-102 was stricken as a direct result of the repealer. He assured Sen. Story that no new provision was added, and the language was in keeping with the intent of this bill.

Closing by Sponsor:

SEN. ANDERSON closed on SB 146.

HEARING ON SB 91

Sponsor: SEN. DON RYAN, SD 22, GREAT FALLS

Proponents: Greg Jergeson, PSC

**Bob Rowe, PSC Chairman**  
**John Fitzpatrick, NorthWestern Energy**  
**David Hoffman, PPL Montana**  
**Ron Perry, Commercial Energy of Montana**  
**Sheila Rice, Energy West**  
**Debbie Smith, NRDC**

**Opponents:**        none

**Opening Statement by Sponsor:**

**SEN. DON RYAN, SD 22, GREAT FALLS**, opened by reminding the committee that during the last session, a lot of people were out of work because they had chosen to go to the open market for their power rather than staying on the MPC system. As long as the open market prices were good, they did indeed save some money but when prices went up, they needed an avenue to opt back in. The sponsor felt language was needed in the law to protect businesses and their workers by making power available to them through the default supplier. The bill directs the PSC to clarify who will bear the cost when a company opts back in, and it also restricts use of that power by prohibiting its resale.

**Proponents' Testimony:**

**Greg Jergeson, PSC**, supplied written testimony,  
**EXHIBIT (ens09a02)** .

**Bob Rowe, PSC**, also turned in written testimony,  
**EXHIBIT (ens09a03)** .

**John Fitzpatrick, NorthWestern Energy**, stated that his company endorsed the concept of the bill. However, they were concerned with regards to customers who came back to the default supplier and wanted to make sure the costs involved were not shifted to either the ratepayers or to NorthWestern Energy in its role as the default supplier. He felt the language dealing with cost recovery was a good start but proposed an amendment ensuring full cost recovery for all electric supply costs incurred, see **EXHIBIT (ens09a04)** . He went on to explain that in some instances, the cost involved in returning to the default supplier could be absorbed by the power company, but in others, especially if power prices spike or multiple companies' contracts expired simultaneously and a substantial load was involved, the default supplier may not find a good price on the open market and did not want to end up footing the bill by buying at higher prices and having to sell at the current, lower default supply rate. By the

same token, they did not want to shift the burden to the ratepayers by raising their rates.

**{Tape: 1; Side: B}**

**David Hoffman, PPL Montana**, read a statement prepared by PPL Montana, **EXHIBIT(ens09a05)**.

**Ron Perry, Commercial Energy of Montana**, handed an informational booklet on his company to the committee members, **EXHIBIT(ens09a06)**. He claimed that his company's success proved that energy deregulation was working in Montana. He liked the provision affording all public utility customers the opportunity to choose their supplier and the fact that the consumer is protected from the cost shift referred to by NorthWestern Energy. He informed the committee he had been involved in the collaborative process with the PSC during the past seven years and felt the commission should work out the details of these issues as they had the expertise and experience. In his opinion, this bill was a good start, and he offered his continued help to the PSC.

**Sheila Rice, Energy West Resources**, identified Energy West Resources, an electric and gas supply company, as a wholly owned subsidiary of Energy West. She proposed a few changes, namely adding "supplier initiated pilot programs" to Section 2 so that programs for pilot projects could come either from the utility or the supplier, and be approved by the PSC. Pointing to line (8) on page 2, she also wanted to see the size of customer load changed to a smaller number of kw/hours so all of their customers in Montana could qualify for choice under the clause. Lastly, she suggested the bill should ensure that the MDU exemption was not granted to any company purchasing the current utility assets of NorthWestern Energy.

**Debbie Smith, NRDC**, stated her organization's support of SB 91 as well as the amendments proposed by the PSC and NorthWestern Energy. She also lauded David Hoffman's idea of forming a sub-committee for the purposes of considering this bill and other recommendations from the TAC committee, particularly the prohibition of remarketing of electricity from the default supplier.

**Questions from Committee Members and Responses:**

**SEN. EMILY STONINGTON, SD 15, BOZEMAN**, asked whether the utilities whose representatives testified in favor of the bill had been involved in the project. **Bob Rowe, PSC**, affirmed this.

**SEN. STONINGTON** inquired whether most of the aforementioned provisions were included, and **Mr. Rowe** confirmed this as well.

**SEN. MIKE TAYLOR, SD 37, PROCTOR**, wondered if **Mr. Rowe** could commit to a deadline as to when the committee should take action on SB 91. **Mr. Rowe** replied the PSC could reconvene the participants early the following week, their goal being to have a proposal before the committee by the end of January.

**SEN. STONINGTON** addressed a rumor she had heard, namely that the PSC was presenting the "consensus bill", which was made up of parts of the repealed HB 474, in the House Chamber first. She asked to have the commission start in the Senate as all these related bills were before this Senate Committee. **Mr. Rowe** answered he had no preference as to which committee to work with first.

**SENATOR ROYAL JOHNSON, SD 5, BILLINGS**, established that the bill in question was LC 1019.

**SEN. BOB STORY, SD 12, PARK CITY**, referred to Issue (1) of **Greg Jergeson's** testimony and asked if it would not result in more stability for the distribution company and resolve of the cost recovery issue if the customer took default service through individual contracts rather than tariffs as advocated. **Mr. Jergeson** replied that the language did not preclude use of contracts, it simply stayed silent on the subject because most customers were tariff-based while only some were contract-based, and the provisions of the bill should apply to both. **SEN. STORY** wondered if residential customers could have contracts of varying lengths as well. **Mr. Jergeson** felt this distinction need not be made as most of the residential customers were satisfied with being tariff-based.

**Closing by Sponsor:**

**SEN. RYAN** closed, saying this bill was merely a beginning of the work which lay before them. He was adamant that this issue needed to be addressed and resolved in this legislative session in order to protect the people of Montana should the market change again drastically.

**HEARING ON SB 67**

**Sponsor:** **SEN. EMILY STONINGTON, SD 15, BOZEMAN**

**Proponents:** **Bob Rowe, Chairman, PSC**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**SEN. EMILY STONINGTON, SD 15, BOZEMAN**, in explaining the purpose of the bill, offered some insight into the background of the Transition Advisory Council which was formed after the restructuring law was passed in 1997. The fact that the committee received most of its funding from utility companies during this past interim, which was improper and had been remedied, made her question its role and function. She asked **Todd Everts, Legislative Services Division**, to pass out the amendments she had him prepare, **EXHIBIT(ens09a07)**. SB 67, then, is an attempt to restructure and define the role of the TAC committee. She felt that a broader committee should be created to oversee telecommunication and energy issues and have oversight over the PSC which currently has as its interim oversight committee the Business and Labor interim committee. She then presented the committee with the three options contained in the bill: option one would turn the TAC into an interim committee with the provision to continue to consider it a transition advisory committee with regards to electric utility industry restructuring; it would be made up of 12 members, namely 8 legislators and 4 members from the general public, appointed by the majority and minority leadership in each chamber. The amendments offer the second option, e.g. an expansion into an Energy and Telecommunications Interim Committee for which funding was already established. The third option was to abolish the advisory committee altogether. This would have to be done with a separate bill as SB 67 would not allow for a respective amendment. She made clear that this was one of the options the PSC was considering in their consensus bill.

**Proponents' Testimony:**

**Bob Rowe, Chairman, PSC**, handed in written testimony, **EXHIBIT(ens09a08)**.

**Questions from Committee Members and Responses:**

**{Tape: 2; Side: A}**

**SEN. MIKE TAYLOR, SD 37, PROCTOR**, found it hard to believe the bill did not have a fiscal note. **SEN. STONINGTON** replied that it was already considered in the proposed budget under Legislative Services. **SEN. TAYLOR** wondered how a new committee could be added and funded without direction from the Legislature. **Mr. Everts** explained that when the chairman of the TAC committee, **SEN. FRED THOMAS**, was made aware of the problems with funding by outside interests, he went before the Legislative Council which has the ability to transfer funds within Program 21 to an interim committee. **SEN. TAYLOR** inquired how much money was spent on this committee. **Mr. Everts** estimated that roughly \$12,000 were

transferred for the remainder of the interim. **SEN. TAYLOR** expressed his concern with having an industry which was being regulated by legislators fund their very activities. He also questioned whether another committee was needed, saying the Business and Labor interim committee could very well take care of these issues.

**SEN. BOB STORY, SD 12, PARK CITY**, wondered if the original TAC committee had a funding advantage over a new committee should that be proposed. **SEN. STONINGTON** replied the TAC committee had already existed and was funded by outside sources exclusively so it did not present a financial burden to the state. She added that the committee should discuss if creation of a new interim committee was warranted.

**VICE CHAIR COREY STAPLETON, SD 10, BILLINGS**, thought it odd that the industry neither opposed nor favored a continuation of the TAC committee, and declared a decision needed to be made because oftentimes, the temporary became permanent and existed indefinitely.

**Closing by Sponsor:**

**SEN. STONINGTON** repeated that the issue was whether the kind of focus which the TAC had provided on energy issues was still relevant and important enough to warrant the committee's continuation.

**ADJOURNMENT:** 4:10 P.M.

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SEN. ROYAL JOHNSON, Chairman

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MARION MOOD, Secretary

RJ/MM

**EXHIBIT** (ens09aad)